

U.S. District Court Judge Hon. Lauren King

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BEVERLY JANE CARY,

Plaintiff,

v.

PATCH SERVICES, LLC d/b/a NOAH;
PATCH HOMES, INC.; FIRST
AMERICAN TITLE INSURANCE
COMPANY LENDERS ADVANTAGE,

Defendants.

CASE NO. 2:22-cv-00538-LK

DEFENDANT FIRST AMERICAN TITLE
INSURANCE COMPANY'S MOTION TO
STRIKE PLAINTIFF'S SECOND
AMENDED COMPLAINT

NOTE ON MOTION CALENDAR:
JUNE 17, 2022

Pursuant to Federal Rule of Civil Procedure 12(f), Defendant First American Title Insurance Company (erroneously sued as First American Title Insurance Company Lender's Advantage) ("FATIC") hereby submits the following Motion to Strike Plaintiff's Second Amended Adversary Complaint ("SAC").

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Beverly Jane Cary has filed her SAC without leave of the Court or consent of the parties. That filing violated Federal Rule of Bankruptcy Procedure 7015 and should be stricken as a procedurally improper nullity without legal effect. Based on the foregoing

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FIRST AMERICAN'S MOTION TO STRIKE
SECOND AMENDED COMPLAINT-1

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1 and as further set forth below, FATIC respectfully requests that the Court strike Plaintiff's
 2 SAC from the judicial record, leaving the First Amended Adversary Complaint (the
 3 "FAC") as the operative pleading.

4 II. FACTS

5 Plaintiff filed her original adversary complaint ("Complaint") on January 18, 2022.
 6 WD Wa. Bankruptcy Case 22-01000-TWD Docket Entry Number ("Bk. Dkt. No.") 1.
 7 Plaintiff filed a First Amended Adversary Complaint (the "FAC") on January 19, 2022.
 8 Bk. Dkt. No. 2. Then, without obtain leave of court, Plaintiff filed Second Amended
 9 Adversary Complaint (the "SAC") on March 4, 2022. Bk. Dkt. No. 4. The SAC adds
 10 FATIC as a party asserting claims against FATIC for violations of the Escrow Agent
 11 Registration Act, RCW 18.44 *et seq.*, the Washington Consumer Protection Act, RCW
 12 19.86 *et seq.*, and the federal Truth in Lending Act, 15 U.S.C. § 1601, *et seq.* Bk. Dkt. No.
 13 4, ¶¶ 3.23-3.28, 3.40-3.47.

14 There is nothing in the judicial record to support that Plaintiff was granted leave of
 15 the Court or obtained agreement of the parties to file the SAC.

16 III. LEGAL ARGUMENT

17 Federal Rule of Bankruptcy Procedure 7015 provides that Federal Rule of Civil
 18 Procedure 15 applies in adversarial bankruptcy proceedings. Federal Rule of Civil
 19 Procedure 15(a)(1) permits a party just one opportunity to amend a pleading without leave
 20 of the Court. Once a party has amended once, leave of the court is required to amend again.
 21 FRCP 15(a)(2).

22 "If an amended pleading cannot be made as of right and is filed without leave of
 23 court or consent of the opposing party, the amended pleading is a nullity and without legal
 24 effect." *Hardin v. Wal-Mart Stores, Inc.*, 813 F. Supp. 2d 1167, 1181 (E.D. Cal. 2011).

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FIRST AMERICAN'S MOTION TO STRIKE
 SECOND AMENDED COMPLAINT-2

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1 Such a pleading may also be stricken under Rule 12(f). *Canady v. Erbe Elektromedizin*
2 *GmbH*, 307 F. Supp. 2d 2, 7 (D.D.C. 2004).

3 Plaintiff amended her Complaint once as a matter of course and without leave of
4 the Court by filing the FAC on July 19, 2022. Bk. Dkt. No. 2. Plaintiff filed the SAC
5 without leave of the Court and without consent of the parties. Accordingly, the Court
6 should hold that the SAC is a nullity, has no legal effect, and order it stricken. By
7 extension, the summons issued on the SAC (Bk. Dkt. No. 6) is also invalid and must be
8 quashed or vacated.

9 **IV. CONCLUSION**

10 Based on the foregoing, FATIC respectfully requests that the Court grant this
11 Motion to Strike, strike Plaintiff's SAC from the judicial record, and quash or vacate the
12 summons issued on the SAC (Bk. Dkt. No. 6).

13 DATED this 23rd day of May 2022.

14 **LAGERLOF LLP**

15 *s/ Robert A. Bailey*

16 Robert A. Bailey, WSBA No. 28472

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22 *Insurance Company*

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FIRST AMERICAN'S MOTION TO STRIKE
SECOND AMENDED COMPLAINT-3

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of May 2022, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Western District of Washington using the CM/ECF system, which will provide notice to the following parties as indicated below:

Melissa A. Huelsman, WSBA No. 30935 Law Offices of Melissa A. Huelsman, P.S. 705 2 nd Ave, Suite 606 Seattle, WA 98104 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email: mhuelsman@predatorylendinglaw.com <input checked="" type="checkbox"/> By CM/ECF E-Service
Mark McClure, WSBA No. 24393 Law Offices of Mark McClure, PS 1103 W. Meeker St., Suite 101 Kent, WA 98032 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email: mark@mcclurelawgroup.com <input checked="" type="checkbox"/> By CM/ECF E-Service
Christina L. Henry, WSBA No. 31273 Henry & Degraaff, PS 119 1 st Ave S., Suite 500 Seattle, WA 98104 <i>Attorney for Plaintiff</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email: chenry@hdm-legal.com <input checked="" type="checkbox"/> By CM/ECF E-Service
Faye Rasch, WSBA No. 50491 Law Office of Faye C. Rasch 600 Stewart St., Suite 1300 Seattle, WA 98101 <i>Attorney for Defendant Patch Services LLC</i>	<input type="checkbox"/> By United States Mail <input type="checkbox"/> By Legal Messenger <input type="checkbox"/> By Email: fraschlaw@gmail.com <input checked="" type="checkbox"/> By CM/ECF E-Service

DATED this 23rd day of May 2022 at Seattle, Washington.

s/ Karrie L. Blevins
 Karrie L. Blevins, Paralegal
 Lagerlof LLP

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FIRST AMERICAN'S MOTION TO STRIKE
 SECOND AMENDED COMPLAINT-4

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